**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

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| **IN THE MATTER OF** | ) | |
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| **REPORT ON THE PROVISION OF** | ) | |
| ***A LA CARTE* OR THEMED-TIER** | ) | **MB DOCKET NO. 04-207** |
| **PROGRAMMING BY MVPD's.** | ) | |
| | ) | |

**COMMENTS IN OPPOSITION TO *A LA CARTE* OR THEMED TIER PROGRAMMING AND PRICING OPTIONS FOR PROGRAMMING DISTRIBUTION ON CABLE TELEVISION AND DIRECT BROADCAST SATELLITE SYSTEMS**

1. Introduction

The American Center for Law and Justice, Inc. ("ACLJ") is a nonprofit, public interest law firm and educational organization dedicated to advancing civil and religious liberties. human life, and the family.[1] It here submits these comments on behalf of the organizations listed in Attachment 1, the Faith and Family Broadcasting Coalition, which includes the largest producers and distributors of inspirational, religious and family oriented programming in the country (herein "Faith & Family Broadcasters").

To best preserve the values of the First Amendment, Faith & Family Broadcasters urge the FCC to report to Congress that *a la carte* or themed tier programming would have a profoundly adverse impact on the current pricing and availability of diverse programming, and would be inconsistent with the purposes, policies and goals outlined in the Cable Television Consumer

[1] ACLJ attorneys have successfully argued constitutional law cases in federal and state courts across the United States in the advancement of civil and religious liberties. *See, e.g., McConnell v. FEC*, 124 S. Ct. 619 (2003); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Westside Cmty. Schs. v. Mergens*, 496 U.S. 226 (1990).

Protection and Competition Act of 1992, 47 U.S.C. § 521 (the "Cable Act"), and the Satellite Home Viewer Improvement Act of 1999, 47 U.S.C. § 338 ("SHVIA").

The current interest in investigating an *a la carte* option appears to draw its genesis from a proposal from Congressman Nathan Deal, a member of the House Energy and Commerce Committee, during a recent (April 28, 2004) consideration of the Satellite Home Viewer Extension and Reauthorization Act of 2004.[2] The language of Congressman Deal's proposal,[3] however, specifically section 209(a)(3), would have allowed subscribers of all multi-channel video programming distributors (MVPD's)[4] "to select and pay for individual channels of video programming without regard to any tiers or packages" that are offered. This *a la carte* programming is then defined in section 209(a)(4) of Congressman Deal's offer as "special tier programming," which "subscribers are offered the ability to select and pay for . . . without regard to basic cable service or service tier." Because MVPD's are required to carry all local broadcast stations on their basic cable service, allowing them to offer *a la carte* service without regard to their basic tier would permit them to circumvent their mandatory carriage obligations. This would be highly destructive to local broadcast stations and programmers by causing a significant truncation of local markets and service availabilities.[5] Faith & Family Broadcasters are concerned that the

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[2] http://energycommerce.house.gov/108/Markups/04282004markup1261.htm

[3] http://energycommerce.house.gov/108/Markups/04282004/amendment3.pdf

[4] A Multichannel Video Programming Distributor (MVPD) is "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. § 522(13).

[5] The local carriage obligations for cable operators regarding commercial broadcast stations are found in 47 U.S.C. § 534, and the obligations regarding noncommercial broadcast stations are found in 47 U.S.C. § 535. The local carriage obligations for satellite carriers are found in 47 U.S.C. § 338. The Satellite Home Viewer Improvement Act grants satellite carriers a royalty-free copyright license allowing them to retransmit a broadcast station's signal into that station's

Commission's current evaluation must avoid such an outcome, and it should take no action to implement *a la carte* programming options that would similarly result in the loss of program diversity and public service, or alter the carriage obligations of MVPDs under the Cable Act or SHVIA.

2. Arguments

**Historical.**

MVPD's currently have the option to purchase some channels from programmers on a stand-alone basis that they can offer to customers on an *a la carte* or theme-tier basis. Most channels, however, are only available to cable companies if they are offered in specific tiers with other programs. Cable providers must (1) obtain the "rights to carry cable networks from a variety of sources and (2) pay license fees."[6] These license fees are normally paid based on the number of subscriptions to the channel the provider has.[7] There are three types of major cable networks (MCN's): "large media companies that also own major broadcast networks (such as Disney and Viacom), large cable operators (such as Time Warner and Cablevision), and independent programmers (such as Landmark Communications)."[8]

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designated market area without obtaining authorization from individual program copyright holders. *See* 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite carrier provides "local-into-local" satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. *See* 47 C.F.R. § 76.66(a)(6).

[6] General Accounting Office, *Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry* 4, *available at* http://www.gao.gov/new.items/d048.pdf (Oct. 2003) [*hereinafter* "GAO Report"].

[7] *Id.*

[8] *Id.*

Local cable operators[9] are subject to local and state government regulations and contractual obligations to the MCN's.[10] Each channel franchised by an MCN normally comes with a contractual requirement to be included in a specific cable bundle; otherwise, it may be available *a la carte*.[11] The basic tier of programming offered by most MVPD's provides 25 channels, which include local stations and the major news channels. The expanded-basic tier adds most other widely watched channels.[12] A consumer that has purchased a certain tier level (generally expanded-basic) may typically purchase all the channels not included in the bundle on an *a la carte* basis. Some channels are also available in theme-tiers, like sports or entertainment.[13] Federal regulations limit rates and rate increases, and define the basic and extended tiers for MVPD's, unless there is competition in the market.[14]

Regulatory and contractual limitations restrict the flexibility of MVPD's. The two primary limitations on MVPD's flexibility in offering programming *a la carte* are federal and local regulations requiring specific channels to be provided in the basic tier bundle and the MCN's

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[9] A Cable Operator is a "person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." 47 U.S.C. § 522(5). Cable Operators are distinctly different from satellite providers; they carry a stronger burden of responsibility to the public, including local news, weather, and diverse programming. *Santellana v. Nucentrix Broadband Networks, Inc.*, 211 F. Supp. 2d 848 (S.D. Tex. 2002). A Cable System is "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community." 47 U.S.C. § 522(7).

[10] GAO Report at 4.

[11] *Id.* at 15, n.15.

[12] Id.

[13] Id.

[14] Id. at 5.

contractual requirements that their channels be included in specific bundles. MVPD's are often able to sell channels *a la carte* that are not otherwise in the basic or expanded packages.

Extensive statutory, regulatory, and contractual action would be needed to remove any such limitations. All federal and local regulations concerning "must-carry bundles"[15] and price capping[16] would need to be amended or removed for absolute *a la carte* programming to be possible. Regulations dealing with "effective competition" may also require revision. Additionally, Congress would have to authorize the FCC to invalidate many existing contractual limitations between the MVPD's and the MCN's. Thus, a regulation removing bundles could cause the cost of cable to increase for many subscribers because it would effect both the advertising revenue and subscriber revenue of the MVPD's and MCN's.[17]

**Rates.**

The GAO Report also notes that "[e]ven if cable operators desired to offer customers a wider variety of bundles of services or even *a la carte* service, most contracts negotiated between cable networks and cable operators prohibit these alternatives.[18] In order to obtain the maximum number of viewers, "the top 40 to 50 networks specify that their networks appear on either the basic or expanded-basic tier."[19] Offering *a la carte* service would involve completely changing duly negotiated existing contracts that have created a successful economic model for the cable industry for many years.

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[15] Joel Timmer, Broadcast, Cable and Digital Must Carry: The Other Digital Divide, 9 Comm. L. & Pol'y 101, 122 (Winter 2004).

[16] Rafawl G. Prohias, Comments: Longer than the Old Testament, More Confusing Than the Tax Code: An Analysis of the 1992 Cable Act, 2 CommLaw Conspectus 81 (1994).

[17] GAO Report at 35-36

[18] Id. at 30, 33.

[19] Id. at 34

The GAO study also found that an *a la carte* system could cause cable rates to increase for many consumers.[20] The report noted that "cable networks earn much of their revenue from the sale of advertising that airs during their programming."[21] The cable networks want to be on cable operators' most widely distributed tiers so that they can receive the maximum revenue possible from advertisers. An advertiser "will pay more to place an advertisement on a network that will be viewed, or have the potential to be viewed by the greatest number of people."[22] The GAO found that "any movement of networks from the most widely distributed tiers to an *a la carte* format could result in a reduced amount that advertisers are willing to pay for advertising time because there would be a reduction in the number of viewers available to watch the networks."[23] An *a la carte* system would thus decrease the number of viewers that advertisers could reach, thereby lessening the amount that advertisers are willing to spend, forcing cable networks to make up for the revenue shortfall in other ways, and reducing the widest possible array of programming options.

Cable networks would likely make up for the decreased advertising dollars by increasing the license fees that they charge to cable operators.[24] An example cited in the GAO study suggested that a network charging $.025 per subscriber may have to charge as much as a few dollars per subscriber per month in order to compensate for lost advertising revenue in an *a la carte* scenario.[25] And, of

[20] *Id.*

[21] *Id.*

[22] Id. at 35.

[23] *Id.*

[24] Id. at 36.

[25] *Id.*

course, "increased license fees, to the extent that they occur, are likely to be passed on to subscribers," illustrating why consumers will pay more in an *a la carte* world.[26]

*A la carte* service, in any form, will inevitably (and promptly) cause an increase in the consumer retail rates, or dramatically reduce program options for the viewer. Offering *a la carte* as an option in addition to the currently offered packages will likely take subscribers from the packaged tiers, thereby decreasing advertising leverage of cable networks and increasing license fees which consumers ultimately pay. The result would be even more extreme if *a la carte* was offered exclusively because only a few networks would be able to generate the massive number of subscribers needed to attract substantial advertising and the other networks would be left to generate revenue through higher license fees, which will in turn be passed to consumers. For that reason, any offering of *a la carte* will surely cause consumer retail rates to increase.

Previous *a la carte* experiences illustrate the difficulties and expense of such a system. The Golf Channel, for example, began as an *a la carte* network relying mostly on subscription fees (rather than advertising) to generate revenue.[27] When it later moved from an *a la carte* network to the expanded basic tier, the network went from less than three million subscribers to about 60 million subscribers in the United States alone.[28] The vast increase in viewers allows cable networks to stabilize and offset costs through advertising, which is particularly vital for new or specialty networks. *A la carte* is more expensive to consumers than the existing packages. When the Disney Channel was offered on an *a la carte* basis, its cost was $8-13 per month; since it moved to the

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[26] *Id.*

[27] National Cable & Telecommunications Association, *The Pitfalls of A La Carte: Fewer Choices, Less Diversity, Higher Prices* 8 (May 2004).

[28] *Id.*

expanded basic tier, the Channel now costs $1-2 per month.[29] These examples illustrate that *a la carte* networks could cost the consumer more per month even when less channels are purchased than are offered in currently existing packages.

**Retransmission Consent.**

Retransmission consent rights, which were enacted with the must-carry regulations, provide broadcasters with a negotiating tool with cable operators.[30] "Retransmission consent prohibits cable operators and other multichannel video programming providers from retransmitting the signal of a commercial television station without the prior consent of that station, unless the broadcaster has exercised its must-carry rights."[31] Broadcasters can give up their must-carry rights and negotiate specific terms, often more favorable, with the cable operator to carry their signals. "Retransmission consent has been used by ABC to gain cable carriage for ESPN2, Toon Disney and SoapNet; by NBC for MSNBC; by FOX for FX; and by CBS for TNN and CMT: Country Music Television."[32]

The 1992 Cable Act "divides the cable services of a system that is subject to rate regulation into three categories: (1) the basic service tier; (2) cable programming service; and (3) video programming offered on a per channel or per program basis, which alone is not subject to rate regulation."[33] Any "unreasonable" charge will lead to an FCC review of the rate. This is done on a "case-by-case basis when a subscriber, franchising authority, or other relevant State or

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[29] *Id*. at 11-12.

[30] Timmer, *supra* note 12, at 143.

[31] *Id.* (citing 47 U.S.C. § 325(b) (2004)).

[32] *Id.* at 144.

[33] *Time Warner Entm't Co. v. FCC*, 56 F.3d 151, 162 (D.C. Cir. 1995) (citing 47 U.S.C. § 543(a)(1)-(2)).

local governmental entity files a complaint."[34] Therefore, rates have been controlled. The rules governing retransmission consent and must-carry do not limit consumer ability to select programming. Consumers may purchase additional programs from an MVPD on a per channel or per program basis to supplement the basic tier programs.[35] Further, the Supreme Court held in *Turner Broadcasting System, Inc. v. FCC* that "promoting the widespread dissemination of information from a multiplicity of sources" is an important government interest, and a core First Amendment value.[36]

**Diversity of Programming.**

*A la carte* would actually limit viewer program choice. The mandatory carriage and inclusion provisions are intended to "promote the availability to the public of a diversity of views and information through cable television and other video distribution media."[37] "This interest lies at the core of the First Amendment: 'Assuring that the public has access to a multiplicity of informational sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.'"[38] Congress has found that "[t]he cable industry has become highly concentrated," and that "[t]he potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers."[39] Congress

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[34] *Id.* at 162-63 (citing 47 U.S.C. § 543(c)(1)(B), (c)(3)).

[35] *Id.* at 162.

[36] *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997).

[37] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(b)(1), 106 Stat. § 1460 (Oct. 5, 1992).

[38] *Time Warner Entm't Co. v. FCC*, 93 F.3d 957, 976 (D.C. Cir. 1996) (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 663 (1994)).

[39] Congressional Findings and Statement of Policy, Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, § 2(a), (b), 106 Stat. § 1460 (Oct. 5, 1992).

has also found that "[t]here is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media."[40]

Local broadcasters, critical outlets for new, innovative and diverse programming, particularly specialty and inspirational and religious programming, carry an obligation to the public to ascertain local needs and interests and to provide programming responsive to those needs; MVPD's do not. Local broadcasters must also provide emergency alert services and warnings. By giving MVPD's the ability to *a la carte* their carriage obligations away, the vital services that local broadcasters provide to the public would be lost, and service to the public diminished.

The FCC has sought to promote four types of diversity: outlet diversity, viewpoint diversity, source diversity and program diversity.[41] The focus of outlet diversity is to provide consumers with a number of different options from which they can receive television programming, for example from broadcast stations, cable, or satellite.[42] Viewpoint diversity promotes the widespread dissemination of information from a multiplicity of sources. [43] "Source diversity focuses on ensuring that the public has access to information and programming from multiple content providers and producers."[44] "Program diversity refers to the range of choices available to viewers in regards to the number of different programs and program formats."[45]

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[40] *Id.*

[41] Timmer, supra note 12, at 140-142.

[42] *Id.*

[43] Id. at 141.

[44] *Id.*

[45] Id. at 141-42.

"A move to an a la carte approach could result in reduced advertising revenues and might result in higher per-channel rates and less diversity in program choice."[46]

> Most of the cable networks we interviewed also believe that programming diversity would suffer under an a la carte system because some cable networks, especially small and independent networks, would not be able to gain enough subscribers to support the network. For example, one network told us that under an a la carte system, fewer networks would remain financially viable and new networks would be less likely to be developed. Three of the cable operators and four of the five financial analysts we interviewed also said that smaller networks or those providing *specialty* programming would be hurt the most by an a la carte system. A number of the cable networks indicated that launching a new network under an a la carte system would be very difficult. Similarly, according to NCTA, an a la carte approach could result in the disappearance of many networks and could undermine the prospects for any new basic cable networks. Further, if an a la carte system resulted in limited subscribers and decreased advertising revenue, several networks said the quality of programming available might be adversely impacted.[47]

The Concerned Women Programming Executives wrote that, "[c]able program services like ours depend on a dual revenue stream of advertising and license fees paid by cable operators and satellite carriers," and added, "[a] substantial portion of our networks' revenues comes from advertising, which is directly tied to audience reach." The Executives also noted that "[t]his economic model has been extremely successful in improving the quality and quantity of television programming choices for the American consumer," and "it would substantially reduce audience reach and viewership, resulting in reductions in advertising revenue that would cause the demise of many existing cable program services and severely limit the creation of new ones."[48]

The viewpoints offered to society from the religious, minority and ethnic communities also face the danger of being silenced by the imposition of an *a la carte* regime. Members of the Congressional Black Caucus expressed their concerns about *a la carte* distribution of cable program

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[46] GAO Report at 30.

[47] Id. at 36-37.

[48] Letter from The Concerned Women Program Executives, available at http://www.ncta.com/a_la_carte/ open_letter_from_women_execs.pdf.

services to the Committee on Energy and Commerce. They pointed out that, in January 2004, both TV One, a new cable network for African Americans and ESPN Deportes, a Spanish language sports station, began operation. The Black Caucus expressed concern about how these networks will be placed in jeopardy in an *a la carte* environment. Its members expressed the same revenue concerns that the Concerned Women Programming Executives expressed and the resulting negative impact to programming diversity.[49] This same concern exists for the programming produced and distributed by the Faith & Family Broadcasters.

Judith McHale, President of Discovery Communications, told the Senate Commerce Committee that "Discovery's award-winning networks will not exist in an *a la carte* environment and consumers will have lost the channels they regard as the pre-eminent source of high quality, family-friendly programming."[50] Alfred Liggins, Chairman of TV One, said that if *a la carte* is adopted, it "would have a chilling effect on programming diversity in America."[51] Mr. Liggins added that *a la carte* "could put us and many other innovative cable networks out of business."[52]

"The Federal Communications Commission has for many years imposed [on] . . . television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage. This is known as the fairness doctrine, which originated very early in the history of broadcasting and has maintained its present outlines

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[49] Letter to Leaders of the House Energy and Commerce Committee from the Congressional Black Caucus, available at http://ncta.com/a_la_carte/cbc_letter_on_a_la_carte_5-04.pdf (May 2004).

[50] Letter from Judith McHale, President and Chief Operating Officer, Discovery Communications, Inc., to Members of the Senate Committee on Commerce, Science, and Transportation (Mar. 8, 2004).

[51] Alfred Liggins, Destroying Diversity: The Perils of 'A la Carte' Pricing on TV, The Washington Times, Apr. 12, 2004, at A21.

[52] *Id.*

for some time."[53] In effect, the FCC has expanded the fairness doctrine to include the goals of diversity.

*A la carte*'s effect on diversity in programming should be viewed in the context of the Supreme Court's statements in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). The Court said that, "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."[54] The Court reiterated that "[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee."[55] The Court added that the public's right "to receive suitable access to social, political, esthetic, moral, and other ideas and experiences . . . . may not constitutionally be abridged either by Congress or by the FCC."[56] The religious and inspirational programming of the Faith & Family Broadcasters remain a significant part of fulfilling that First Amendment value. It is beyond peradventure that religious values and culture are an enormously wholesome and positive force in our free and democratic society. Any regulatory scheme that would inhibit its open availability, along with the availability of minority and foreign language programming, must therefore be avoided.

**Set-Top Boxes.**

Another factor affecting the feasibility of an *a la carte* or themed-tier cable plan is the cost of the new technological equipment required. Under an *a la carte* distribution system, subscribers would need to have an addressable converter box (set-top box) on every television set attached to

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[53] Red Lion Broad. Co. v. FCC, 395 U.S. 367, 369 (1969).

[54] Id. at 390.

[55] *Id.*

[56] *Id.*

the cable system.[57] A set-top box would be needed to unscramble networks, because cable operators would need to scramble all of the networks they transmit to ensure that subscribers are unable to view networks they are not paying to receive.[58]

Currently, the majority of televisions are not equipped with a set-top box because the networks are usually transmitted in an unscrambled fashion.[59] The cost of obtaining a set-top box is clearly a cost hurdle for consumers.

> According to FCC's 2002 survey data, of the franchises that responded to the survey and provided cost data on addressable converter boxes, the average monthly rental price for a box is approximately $4.39. For homes that have multiple television sets, the expense for these boxes could add up—the extra cost for a home that needs to add three addressable converter boxes would be about $13.17 a month at current prices.[60]

Although unable to find the exact number of cable subscribers with addressable converter boxes, a recent survey of cable operators indicates that the majority of cable subscribers do not currently have set-top boxes.[61] The fact remains that cable is still a largely analog delivery system, only about thirty percent of cable subscribers receive a digital service, thus roughly fifty million subscribers do not currently have or need a set-top box.[62] That staggering statistic does not even include all of the televisions in "digital cable homes" that do not have set-top boxes.[63]

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[57] GAO Report at 31.

[58] *Id.*

[59] *Id.*

[60] *Id.* At 32

[61] *Id.*

[62] The Pitfalls of A La Carte, at http://www.ncta.com.

[63] *Id.*

Due to the nature of analog cable, there is no practicable way to provide analog channels on an *a la carte* basis. Instead, a cable operator would have to duplicate all analog signals in digital. In order to receive the digital programming, however, every customer would need an addressable set-top box for every television in his or her home. The cost of this approach could be in the billions of dollars.[64]

**Legal and Regulatory Questions**

Both cable and satellite operators are subject to must carry regulations.[65] However, unlike cable carriers, satellite carriers are not required to carry local television stations. If a satellite carrier offers subscribers in a given market any local stations from that market, then SHVIA requires the carrier to carry all the local stations.[66] The primary difference between satellite carry one, carry all, and "the cable must-carry rules is that § 338's obligations are conditioned upon the satellite carrier's voluntary choice to make use of the § 122 license in a particular television market."[67] "SHVIA's carriage obligations are not triggered simply by the decision to carry a local broadcast station in a given market. Instead, they are triggered by the decision to carry that station by making use of the [compulsory copyright license of] § 122 [ ]."[68]

Must-carry rules prohibit MVPD's from offering local broadcast stations on an *a la carte* or themed-tier basis. The Supreme Court of the United States has upheld an important governmental

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[64] *Id.*

[65] See, note 5, supra.

[66] Satellite Broad. & Comm. Ass'n v. FCC, 275 F.3d 337, 350 (4th Cir. 2001).

[67] Id. at 350. 47 U.S.C. § 122 creates a royalty free distribution right that corresponds to the carry one, carry all obligations found in 47 U.S.C. § 338.

[68] Id. at 354.

interest in preserving the benefits of free, over-the-air local broadcast television.[69] Both *a la carte* and themed-tier would increase costs to the consumer and would therefore run counter to the express purposes of the Cable Act.

If Congress required programmers to offer their channels to MVPD's on a stand-alone basis, it would potentially "undermine the government's interest in ensuring that over-the-air viewers continue to receive a rich mix of information and programming from a multiplicity of local broadcast sources."[70] Congress could be seen as abandoning or altering "its constitutionally assigned task of striking a balance between the interests of authors and the public interest."[71]

If Congress allowed MVPD's to voluntarily offer their channels on an *a la carte* or theme-tiered basis, it would also undermine important governmental interests upheld in *Turner*, that "must carry was designed to serve."[72] Such a policy would also create a problem for satellite carriers, which are currently required by SHVIA to carry all local programmers if they carry one.

**3. <u>Conclusion</u>**

Because of the threat to the important governmental interest in "promoting the widespread dissemination of information from a multiplicity of sources" posed by *a la carte* regulations or legislation, Faith & Family Broadcasters strongly oppose any

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[69] 69 See Turner Broad. Sys., Inc. v. FCC, 520 U.S. 180, 189 (1997).

[70] Satellite Broad. & Communs. Ass'n, 275 F.3d at 367.

[71] Id. at 367-68.

[72] Turner Broad. Sys., 520 U.S. at 189.

implementation or experimentation in this area.[73] The current market and program distribution regime, including must-carry and retransmission consent, have served and protected important governmental interests that have provided the framework for the cable industry's growth, stabilization and consumer protection since its inception. Current economic realities do not support the proposition that *a la carte* or themed-tier programming should be implemented now or in the foreseeable future. The Commission should therefore report to Congress that *a la carte* would be destructive to the market and greatly undermine the development and availability of a multiplicity of diverse programming and program sources to the public.

Respectfully Submitted,

**Faith & Family Broadcasters Coalition**

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73 *See id.*

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